

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TARAHJAY M. ROSS,
Plaintiff

v.

LT. FISS, et al.,
Defendants

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No. 1:21-cv-02080

(Judge Kane)

ORDER

AND NOW, on this 31st day of March 2023, upon consideration of Defendants Thomas, Donatto, and Fiss (“Defendants”)’s motion to dismiss the complaint filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Doc. No. 14), and in accordance with the Court’s accompanying Memorandum, **IT IS ORDERED THAT:**

1. Defendants’ motion (Doc. No. 14) is **GRANTED in part** and **DENIED in part** as follows:
 - a. Defendants’ motion is **GRANTED** as to Plaintiff’s First Amendment retaliation claim against Defendant Thomas, and that claim is **DISMISSED** from the complaint; and
 - b. Defendants’ motion is **DENIED** in all other respects;
 - c. Plaintiff is permitted to proceed on his Fourteenth Amendment excessive use of force claims against Defendants Thomas and Fiss, and on his First Amendment retaliation claim against Defendant Donatto;
2. Defendants may file a motion for summary judgment on the limited issue of administrative exhaustion, brief in support thereof, statement of material facts, and corresponding exhibits within **thirty (30) days**. If Defendants file such a motion for summary judgment, Plaintiff may file a response in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court. Additionally, if Defendants file such a motion for summary judgment, the parties are placed on notice that the Court will consider the issue of exhaustion in its role as a fact-finder. See Paladino v. Newsome, 885 F.3d 203, 211 (3d Cir. 2018); Small v. Camden Cty., 728 F.3d 265, 271 (3d Cir. 2013); and

3. If Defendants elect to forego, at this time in the case, the filing of a motion for summary judgment on the limited issue of exhaustion, then Defendants shall file any answer to the complaint within **twenty-one (21) days** of the date of this Order.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania